IN THE

Supreme Court of the United States

October Term, 1977
No. 77-1378

JAPAN LINE, LTD.; KAWASAKI KISEN KAISHA, LTD.; MITSUI O.S.K. LINES, LTD.; NIPPON YUSEN KAISHA; SHOWA LINE, LTD.; and YAMASHITA-SHINNIHON STEAMSHIP CO. LTD.,

Appellants,

vs.

COUNTY OF LOS ANGELES; CITY OF LOS ANGELES; and CITY OF LONG BEACH,

Appellees.

Brief of Amicus Curiae State of California in Support of Appellees.

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Statement of Interest.

The State of California is vitally concerned with the outcome of the case at bar and strongly supports Appellees' position that the ad valorem tax at issue here was properly levied. California has a strong interest in preserving the integrity of the Appellees' tax base and power to tax. With the passage of Proposition XIII, the Appellees' ability to raise revenue has been greatly curtailed. It would indeed be a devastating and unfair situation to require Appellees in the case at bar to give special tax advantages to foreign commerce while requiring Appellees to provide governmental services to foreign commerce. It is the position

of the State of California that foreign commerce must pay its fair share of local governmental services provided to it. Appellants argue that they shouldn't be required to support the general municipal functions which Appellees provide, but should only be liable for taxes which directly pay for services Appellants request, such as police and fire protection. The position taken by Appellants and their supporting Amici would threaten the power of Appellees to levy nondiscriminatory, fairly apportioned ad valorem taxes against foreign commerce in return for the direct and indirect services and benefits which Appellees provide to it. There is ample authority from this Court that interstate commerce must pay its fair share of the cost of the services it receives from a county or other governmental entity. Foreign commerce should be treated no differently or else Appellees and domestic taxpayers will be required to subsidize this foreign commerce. Appellants' position would give Appellees the impossible burden of levying a tax based only on what direct service each taxpayer received. This burden would be impossible because there are many intangible and indirect services which Appellees provide to taxpayers, which services must be borne by all taxpayers equally.

Appellants' position neglects the important fact that local government in California provides general, nonspecific services to all persons and businesses within the taxing jurisdictions, including, but not limited to a stable economic climate in which to conduct business, an orderly society, and an excellent educational system to train workers available for employment by foreign commerce.

Summary of Argument.

The California Supreme Court's decision in the case at bar correctly applies both the spirit and letter of California property tax law and the decisions of this Court.

A proper analysis of current law reveals that foreign and interstate commerce must pay their fair share of government costs where they conduct their business and that local government is not obliged to subsidize their activities.

A nondiscriminatory, fairly apportioned ad valorem tax levied on Appellants' containers does not interfere with the Federal Government's power to regulate foreign commerce because the ad valorem tax at issue here is levied against all property located in California, not just that property owned by foreign corporations.

Finally, all property located in California must pay for all of the direct and indirect benefits provided by government. A taxpayer should not be able to select only those direct benefits it believes it needs, because government provides many indirect benefits to taxpayers in its jurisdiction and the cost of these benefits must be shared equally by all.

ARGUMENT.

I

Foreign Commerce Should Bear General Tax Burdens.

Appellants have correctly pointed out this Court's interpretation of the Commerce Clause that interstate commerce may be required to "pay its own way."

As this Court said in *Western Live Stock v. Bureau of Revenue* (1938) 303 U.S. 250, 254, "[i]t was not the purpose of the Commerce Clause to relieve those engaged in interstate commerce from their just share of state tax burden even though it increases the cost of doing the business." 303 U.S. at 254.

This Court discussed at length in *Complete Auto Transit, Inc. v. Brady* (1977) 430 U.S. 274, the Commerce Clause considerations of imposing a state tax on "the privilege of doing business" within a state to the taxpayer's activity in interstate commerce. That case found that a state tax statute does not violate the Commerce Clause "when the tax is applied to an activity with a substantial nexus with the taxing State, is fairly apportioned, does not discriminate against interstate commerce, and is fairly related to the services provided by the State." 430 U.S. 279. It is the position of the State of California that the nondiscriminatory, fairly apportioned ad valorem tax assessed by Appellees meets the tests set out in *Complete Auto Transit* and does not violate the Commerce Clause with regard to foreign commerce.

The reasoning behind requiring interstate commerce to pay its own way is equally applicable to foreign commerce. This Court recently discussed this principle in the context of imported foreign goods and the Im-

ported-Export Clause. In *Michelin Tire Corp. v. Wages* (1976) 423 U.S. 276, this Court said:

> "Unlike imposts and duties which are essentially taxes on the commercial privilege of bringing goods into a country, such property taxes are taxes by which a State apportions the cost of such services as police and fire protection among the beneficiaries according to their respective wealth; there is no reason why an importer should not bear his share of these costs along with his competitors handling only domestic goods. The Import-Export Clause clearly prohibits state taxation based on the foreign origin of the imported goods, but it cannot be read to accord imported goods preferential treatment that permits escape from uniform taxes imposed without regard to foreign origin for services which the State supplies." 423 U.S. at 287.

In *Michelin* this Court further said:

> "There is no reason why local taxpayers should subsidize the services used by the importer; ultimate consumers should pay for such services as police and fire protection accorded the goods just as much as they should pay transportation costs associated with those goods." 423 U.S. at 289.

It follows then that the Commerce Clause should not be interpreted to accord foreign corporations preferential treatment that permits them to escape nondiscriminatory, fairly apportioned ad valorem taxes which are imposed by the Appellees without regard to foreign or domestic ownership of the property for general and specific services rendered by Appellees. It also follows that local taxpayers should not have to subsidize services used by Appellants.

Thus, pursuant to *Michelin* and *Complete Auto Transit*, the foreign taxpayers in this case must pay their fair share of taxes in return for the direct and indirect benefits they receive from the Appellees.

II

The Tax at Issue Here Does Not Interfere With the Federal Government's Regulation of Foreign Commerce.

It is the position of the State of California that the ad valorem tax at issue here does not interfere with the Federal Government's regulation of foreign commerce just as the ad valorem tax in *Michelin* did not so interfere.

Michelin discussed at length the reasons behind the Import-Export Clause and found the three main reasons to be as follows:

> 1. The Federal Government must speak with one voice when regulating commercial relations with foreign governments, and tariffs, which might affect foreign relations, could not be implemented by the States consistently with that exclusive power.
>
> 2. Import revenues were to be the major source of revenue of the Federal Government and should not be diverted to the States.
>
> 3. Harmony among the States might be disturbed unless seaboard States, with their crucial ports of entry, were prohibited from levying taxes on citizens of other States by taxing goods merely flowing through their ports to the other States not situated as favorably geographically. 423 U.S. at 285-286.

This court in *Michelin* found that the Federal Government's exclusive regulation of foreign commerce was the most important justification for the Import-Export Clause, but that the nondiscriminatory ad valorem tax in *Michelin* had "no impact whatsoever on the Federal Government's exclusive regulation of foreign commerce." 423 U.S. at 286.

This court said, "[B]y definition, such a tax does not fall on imports as such because of their place of origin. It cannot be used to create special protective tariffs or particular preferences for certain domestic goods, and it cannot be applied selectively to encourage or discourage any importation in a manner inconsistent with federal regulation." 423 U.S. at 286.

Appellees have not levied this ad valorem tax on Appellant's property merely because the property is owned by a foreign corporation. This ad valorem tax is levied against *all* general property in the taxing jurisdictions, whether owned by United States citizens or corporations or citizens and corporations of foreign countries. Using the *Michelin* rationale, the tax in question does not violate the Commerce Clause and does not interfere with the Federal Government's exclusive regulation of foreign commerce because the tax does not fall on property owned by a foreign corporation merely because it is owned by that foreign corporation.

III

Taxpayers Must Pay for Indirect as Well as Direct Benefits Which They Receive From Local Government.

Appellants have argued that *Complete Auto Transit* requires that foreign commerce need only pay for those direct benefits which it requests such as police and fire protection. As stated above, *Complete Auto Transit*

concluded that a tax must be fairly related to the services provided by the State. To interpret *Complete Auto Transit* in conformity with Appellants' argument would mean that Appellants would receive all of the indirect services which local government provides but not be required to pay for these services.

As stated above, Appellees provide all taxpayers with many specific, direct services such as police and fire protection, schools, flood control, mosquito abatement, etc. Appellees also provide many general, indirect services to taxpayers such as a stable economic climate, and a pool of potential employees. Appellants have taken the position that they should pay *only* for services which they feel *directly* benefit them such as police and fire protection. They argue they shouldn't pay their fair share of other services, although the flood control district protects against floods so their goods can be delivered, the schools train a pool of employable workers, the mosquito abatement district allows all taxpayers to work in the area without the public health hazard of malaria, and the general economic climate of the area allows their business to prosper.

Appellants argue that they pay specific fees (*e.g.*, wharfage fees) for their harbor activities and thus are paying their own way. However, it should be noted that U.S. corporations would pay the same wharfage fees plus general ad valorem taxes if operating under the same circumstances as Appellants.

In the case at bar, the California Supreme Court discussed the many services provided to the taxpayers by Appellees. These services included harbor facilities, roads, bridges, water suppply, as well as fire and police protection. There are many services, however, which

are more indirect but are nevertheless provided by Appellees and for which all taxpayers, whether foreign or domestic, should pay their fair share.

It would be unreasonable and impossible for Appellees to indicate on all ad valorem tax bills that portion of the tax that was used to fund general economic stability in the taxing jurisdiction. This Court should not adopt a rule that each dollar of tax collected by a governmental entity must be solely correlated to a direct service requested by the taxpayer.

Appellants' position regarding the benefits received by a taxpayer would jeopardize the general tax base of local government. Local government in California presently relies on various taxes to support its general governmental functions. This Court has not in the past required the governmental entity to show what direct service each tax dollar buys. This Court has instead required only that: "the tax is related to a corporation's local activities and the State has provided benefits and protections for those activities for which it is justified in asking a fair and reasonable return." *Colonial Pipeline Co. v. Agerton* (1975) 421 U.S. 101, 108.

This Court explained in *Illinois Central Railroad v. Decatur* (1893) 147 U.S. 190 that:

> "[T]axes proper, or general taxes, proceed upon the theory that the existence of government is a necessity; that it cannot continue without means to pay its expenses; that for those means it has the right to compel all citizens and property within its limits to contribute; and that for such contribution it renders no return or special benefit to any property; but only secures to the citizen that general benefit which results from protection to

his person and property, and the promotion of those various schemes which have for their object the welfare of all."

The Court went on to cite *Cooley on Taxation* and said:

"[I]n Cooley on Taxation (page 416, c. 20, § 1) the matter is thus discussed by the author: "Special assessments are a peculiar species of taxation, standing apart from the general burdens imposed for state and municipal purposes, and governed by principles that do not apply generally. The general levy of taxes is understood to exact contributions in return for the general benefits of government, it promises nothing to the persons taxed beyond what may be anticipated from an administration of the laws for individual protection and the general public good." 147 U.S. at 198-199.

This Court in *Wisconsin v. J. C. Penney Co.* (1940) 311 U.S. 435 discussed the benefits conferred upon foreign corporations within the context of the Fourteenth Amendment, but the analysis is equally compelling in the area of the Commerce Clause. In that case, this Court said:

"[T]he Constitution is not a formulary. It does not demand of states strict observance of rigid categories nor precision of technical phrasing in their exercise of the most basic power of government, that of taxation. For constitutional purposes the decisive issue turns on the operating incidence of a challenged tax. A state is free to pursue its own fiscal policies, unembarrassed by the Constitution, if by the practical operation of a tax the

state has exerted its power in relation to opportunities which it has given, to protection which it has afforded, to benefits which it has conferred by the fact of being an orderly, civilized society . . . . Here, . . . the incidence of the tax as well as its measure is tied to the earnings which the State of Wisconsin has made possible, insofar as government is the prerequisite for the fruits of civilization for which as Mr. Justice Holmes was fond of saying, we pay tax." 311 U.S. at 444-446.

The issue of what direct benefit a taxpayer is entitled to in return for his tax payment was discussed at length in *The Law of Taxation by Thomas M. Cooley*, L.L.D. Fourth Edition, 1924. There Cooley said that "a person taxed cannot object to the tax on the ground that he receives no direct benefit from the application of the proceeds of the tax or that the benefit he receives is small in comparison with the benefits received by other taxpayers." *Id.* at Section 20, pp. 83-84. He goes on to say:

"[I]f it were practicable to do so, the taxes levied by any government ought to be apportioned among the people according to the benefit which each receives from the protection the government affords him; but this is manifestly impossible. The value of life and liberty, and of the social and family rights and privileges, cannot be measured by any pecuniary standard; and by the general consent of civilized nations, income or the sources of income are almost universally made the basis upon which the ordinary taxes are estimated. This is upon the assumption, never wholly true in point of fact, but sufficiently near the truth for the

practical operations of government, that the benefit received from the government bears some proportion to the property held, or the revenue enjoyed under its protection; and though this can never be arrived at with accuracy, through the operation of any general rule, and would not be wholly just if it could be, experience has given us no better standard, and it is applied in a great variety of forms, and with more or less approximation to justice and equality. But other considerations are always admissible; what is aimed at is, not taxes strictly just, but such taxes as will best subserve the general welfare of the political society. (Footnote omitted.) Taxes proper, or general taxes, it has been said, 'proceed upon the theory that the existence of government is a necessity; that it cannot continue without means to pay its expenses; that for those means it has the right to compel all citizens and property within its limits to contribute; and that for such contribution it renders no return of special benefit to any property, but only secures to the citizen that general benefit which results from protection to his person and property, and the promotion of those various schemes which have for their object the welfare of all'. (Footnote omitted.) That this is the correct theory is beyond doubt, but nevertheless the contention has often been presented that property receiving no direct benefit from a tax for particular purpose should not be taxed for such purpose. However, it is almost unanimously held that it is no defense to the collection of a tax for a special purpose that a person liable for the tax is not benefited by the expenditure of the proceeds

of the tax or not as much benefited as others. (Footnote omitted.) For instance, every citizen is bound to pay his proportion of a school tax although he has no children (Footnote omitted), or is not a resident (Footnote omitted), and this also applies to corporations (Footnote omitted); of a police or fire tax, although he has no buildings or personal property (Footnote omitted); or of a road tax although he never used the road. (Footnote omitted.) In other words, a general tax cannot be dissected to show that, as to certain constituent parts, the taxpayer receives no benefits. (Footnote omitted.) So property within the limits of a municipality is subject to local taxation although it derives little or no benefit from the municipal government. (Footnote omitted.). . . .

"Even in case of taxes imposed on a particular district supposed to be especially benefited, the fact that it is extremely doubtful whether a particular piece of land can receive any benefit from the improvement does not invalidate the tax with respect to such land. (Footnote omitted.)

"No system of taxation has yet been devised which will return precisely the same measure of benefit to each taxpayer or class of taxpayers in proportion to payment made, as will be returned to every other individual or class paying a given tax . . ." *Id.* at Section 89, pp. 213-216.

Cooley further discusses the public purposes which justify taxation and states that these include preserving the public order, providing for the enforcement of civil rights and the punishment of crime, compensating public officers and others who perform services for the public, protecting public property, building and

repairing public buildings, and paying the expenses of legislation and of administering the laws. *Id.* at Section 198, pp. 420-421.

Finally, Cooley says taxpayers should not expect to receive equal benefits. He says:

> "[T]he uniformity and equality required in no way depends upon the benefits received. (Footnote omitted.) In order that taxation may be equal and uniform it is not necessary that the benefits arising therefrom should be enjoyed by all the people in like degree, nor that each one of the people should participate in each particular benefit. (Footnote omitted.) Equality does not mean that the pecuniary benefit to be derived by every person who pays taxes shall be equal. (Footnote omitted.) For instance, a school tax based on the same rate and the same valuation is equal and uniform although the owner of certain property taxed may have several children attending the schools while the owner of other property may have no children." *Id.* at Section 261, pp. 564-565.

Appellants receive many more benefits from Appellees than police and fire protection. Appellants and all other taxpayers receive indirect benefits such as an orderly society, and a stable economic community, and these indirect benefits must be borne by all taxpayers within the jurisdiction.

Conclusion.

The foregoing arguments demonstrate the soundness of the decision of the California Supreme Court to reject Appellants' contentions that foreign commerce should not be liable for nondiscriminatory, fairly apportioned ad valorem taxes levied by Appellees. Consequently, the State of California respectfully requests that this Court affirm the decision of the California Supreme Court.

Respectfully submitted,

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Service of the within and receipt of a copy thereof is hereby admitted this ..... day of October, A.D. 1978.

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